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D.A. Fiori Construction Company and International Union of Operating Engineers, Local Union No. 66, 66A, B, C, D, O, & R, AFL-CIO. Case 6-CA-30331

January 31, 2001

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN
AND WALSH

On July 12, 1999, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, directing the Respondent, D.A. Fiori Construction Company, to make whole certain of its employees for loss of earnings and other benefits resulting from the Respondent's unfair labor practices in violation of Section 8(a)(1) and (3) of the Act. On May 18, 2000, the United States Court of Appeals for the Third Circuit entered its judgment enforcing in full the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatees, on November 9, 2000, the Regional Director for Region 6 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated December 4, 2000, the Regional Attorney advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by the close of business on the third day following the receipt of the letter, summary judgment would be sought. The Respondent filed no answer.

On January 2, 2001, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On January 4, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in

the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment.² Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of the amounts to the discriminatees, plus interest accrued on the amounts to the date of payment.³

² The General Counsel's compliance specification requests that the Board order the Respondent to make "payment to each of the discriminatees of the amount of any excess federal and state income taxes they may incur as an increased tax liability as a result of receiving a lump sum backpay distribution in one tax year that represents a backpay award for a multi-year backpay period that would have encompassed several tax years." The General Counsel's proposed order would represent a change in Board law. See, e.g., *Hendrickson Bros.*, 272 NLRB 438, 440 (1985), *enfd.* 762 F.2d 990 (2d Cir. 1985). We believe that the question raised by the General Counsel should be resolved after a full briefing by the affected parties. See *Kloepfers Floor Covering*, 330 NLRB No. 126 fn. 1 (2000). Because there has been no such briefing in this no-answer case, we decline to include this additional relief in the Order.

³ The compliance specification sets forth the backpay owing to the discriminatees through September 30, 2000, and alleges that their backpay periods continue to run until the Respondent makes valid offers of reinstatement to them.

¹ 328 NLRB No. 136 (1999).

ORDER

Dated, Washington, D.C. January 31, 2001

The National Labor Relations Board orders that the Respondent, D.A. Fiori Construction Company, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and state laws:

Sean Puz	\$17,245.00
Jeff Whitico	3,678.00
TOTAL:	\$20,923.00

John C. Truesdale,	Chairman
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Peter J. Hurtgen,	Member
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Dennis P. Walsh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD